IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 5560 of 1994

KANHAIYALAL & ORS
V/S
BOARD OF REVENUE & ORS

Mr. SUDHIR SHARMA, for the appellant / petitioner

Mr. RAJAT DAVE, for the respondent
Mr. OP BOOB, AGA

Date of Order : 7.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner seeks to challenge the orders, Annex.5, 6 & 7, being dated 30.10.82, 13.7.89, and 23.9.94, respectively. Annex.6 & 7 are the orders of the Board of Revenue, whereby the reference made vide Annex.5 was accepted, and D.B. Civil Special Appeal against that acceptance has been dismissed.

The facts of the case are, that in Udaipur District, village Majawad, Tehsil Gogunda was Jagir of thikana Gogunda, of which late Bherusingh was Jagirdar. It is claimed that land in question bearing Khasra No.20 measuring 158 bigha 9 biswa, and Khasra No.23 measuring 296 bigha 8 biswa was his Khudkast land, and was in his possession, for which entry was made in the Settlement Department in Samvat year 1995. Then in view of the above, with coming into force of the Rajasthan Land Reforms &

Resumption of Jagirs Act, 1952, hereafter to be referred to as the "Act of 1952", he became khatedar of the land. Then Rajasthan Tenancy Act came into force in 1955, at that time also, the land was in his possession, and was mentioned in the revenue record as Khudkast land of Thikana Gogunda. Thus, Bherusingh acquired khatedari rights even according to Section 15 of the Rajasthan Tenancy Act. Then in the year 1963 this land was transferred by registered sale deed. It is pleaded that mutation No.95 was sanctioned, copy whereof has been produced as Annex.3, whereby the land was mutated in the name of Jadirdar. It is then alleged that Additional Collector, Udaipur issued some notices to the petitioners calling upon them, as to why reference be not made for cancellation of the entries made vide mutation No.95, and the learned Additional Collector vide order dated 30.10.82 made reference for cancellation of mutation No.95. According to the petitioner, this appears to have been done on the application of the Forest Officer, Udaipur, and was based on gazette notifications dated 21.10.45 and 27.12.46, of the then Mewar Government. In the order dated 30.10.82, the land in dispute was found to be forest land, and to have been entrusted to the Forest Department by the aforesaid two notifications. Then the learned Board of Revenue vide the aforesaid order Annex.6, accepted the reference, and appeal against that order filed under Section 10 of the Rajasthan Land Revenue Act, was dismissed.

It is contended by learned counsel for the petitioner, that the gazette notifications of the year 1945 and 1946 do not mention the Khasra numbers of the land, and only describes the land by boundaries, which is not sufficient to identify the land in question to be covered by those notifications. Then further submission made is, that the ceiling proceedings were initiated against Bherusingh, wherein 80 bigha 12 biswa land was declared surplus, and the same was surrendered, and no objection was raised by the Forest Department in that regard, which by itself is sufficient to show, that the land never belonged to, or vested in the State Government. Other ground raised is, that vide order dated 29.12.77, the Board of Revenue had allowed Bherusingh to cut the trees over the land in question, which is sufficient to establish that the land belong to Bherusingh.

The counsel for the State and counsel for Bherusingh, on the other hand, supported the impugned orders.

A look at the impugned orders shows, that the learned Board of Revenue has considered all these aspects as were projected before it, and has found, that the question about land being Khudkast had been a subject matter of consideration by the Jagir Commissioner, who had

made adjudication, and passed the order dated 15.4.63, and in that order, the land in question was not found to be the personal property, or the Khudkast land, of the Jagirdar. Admittedly, that order had not been challenged any further by the Jagirdar. In that view of the matter, in view of the provisions of the Act of 1952, especially Section 39, it no more remains open to any other Court, authority, or Tribunal, to go into the question about the land being Khudkast land, or the personal property of the Jagirdar.

In my view, this finding is perfectly in accordance with the provisions of the Act of 1952, and does not require any interference in my writ jurisdiction. Likewise, the learned Board of Revenue has also considered that at page 16 & 17 of the file of reference, there is an abstract of the list of the properties of the Jagir village, and a look thereat shows, that even according to the Patwari, the land never was of Jagirdar before, or at the time of resumption, nor was it so entered in the revenue record, nor was it claimed to be personal by the Jagirdar.

Then regarding the notifications under the Forest Act also, the learned Board of Revenue has found, that the learned Single Member, in the order Annex.6, has rightly considered the notifications, and found, that on account of land being reserved by the Mewar Government, as forest land

by notifications mentioned above, whatever rights the Thikana had in the lands, stood extinguished. It has also been found by the learned Single Member that notification dated 21.10.45 was issued after getting survey of the area, and after obtaining signature of the erstwhile Jagirdar of Gogunda.

In that view of the matter, in my view, unless this finding is assailed, which has not been so assailed, it cannot be said that there is any dispute, about the identity of the land, notified as forest land, by notifications of the year 1945 and 1946.

In view of the above, since the land was notified as forest land way-back in the 1940's, and there is nothing to show its de-notification, this coupled with the fact, that in the order dated 15.4.63, the Jagir Commissioner has not found the land to be of Bherusingh, it cannot be said, that the impugned orders require any interference in my writ jurisdiction.

It may be observed that the aspect of permission having been granted by the Board of Revenue for cutting trees has also been properly considered by the Board.

The net result of the aforesaid discussion is, that the writ petition is devoid of any merit, and is,

therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

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